

STATE OF MICHIGAN
COURT OF APPEALS

In re D.K. LEFEVRE, Minor.

UNPUBLISHED

October 16, 2014

No. 321181

Hillsdale Circuit Court

Family Division

LC No. 11-000371-NA

Before: BORRELLO, P.J., and SERVITTO and SHAPIRO, JJ.

PER CURIAM.

Respondent father appeals as of right the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist), (c)(ii) (other conditions exist that could have caused the child to come within the court's jurisdiction and they have not been rectified), (3)(g) (failure to provide proper care and custody), and (3)(j) (reasonable likelihood of harm if child is returned to parent). We affirm.

On appeal, respondent does not contest the trial court's finding that statutory grounds for termination had been established by clear and convincing evidence. See *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). Rather, he argues only that the trial court improperly determined that termination of his parental rights was in the minor child's best interests. In a termination of parental rights proceeding, a trial court must find by a preponderance of the evidence that termination is in the child's best interests before it can terminate parental rights. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). We review the best-interests finding for clear error. *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). "In deciding whether termination is in the child's best interests, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted).

In this case, the minor child spent the first three months of his life out of respondent's care because child protective proceedings were initiated three days after the minor child's birth as a result of respondent's inability to provide for the child's "basic needs." The minor child returned to respondent's care when nearly four months old and the trial court terminated its jurisdiction when the minor child was one year old. Three months later, in June 2011, another petition for child protective proceedings was filed. Between May 2011 and April 2012, respondent spent a considerable amount of time in jail because of a fourth-degree criminal sexual conduct conviction and because he twice violated a personal protection order that was acquired

against him by the minor child's mother. When respondent was free from incarceration, he often failed to interact with the child during parenting times; at times, he also failed to provide items necessary for the child's basic needs. In August 2013, when the minor child was present in the home for an unsupervised visitation with respondent, respondent committed a crime against a minor female. Respondent's actions during the August 2013 visitation resulted in another fourth-degree criminal sexual conduct conviction. At the time of the termination hearing, respondent was serving a one-year jail sentence. Respondent had not seen the minor child for six months and had at least 115 days remaining on his jail sentence. The minor child referred to his foster parents as "Mom and Dad." In sum, the record evidence overwhelmingly supports that the child was not bonded to respondent.

Although respondent argues that it was in the best interests of the minor child for the court to provide respondent with more time to address respondent's "inability to stay[] away from minor females," this Court must look to the best interests of the minor child, including his need for stability. See *In re Trejo Minors*, 462 Mich 341, 364; 612 NW2d 407 (2000). The minor child had behavioral issues and developmental delays and had spent 23 months of his four years of life in foster care. The foster home was providing the consistency and stability that the child needed in order to progress. The foster family was willing to continue to provide for the child's needs until he could be provided with a permanent placement. The record establishes that respondent would be unable to provide the consistency and stability that the child needed within a reasonable time. Moreover, the proceeding relevant to the issue on appeal lasted two years and nine months. Given respondent's lack of consistent participation in services during this lengthy proceeding and his unwillingness to accept responsibility for his behavior, the record does not support that he would comply with or benefit from additional counseling were it was provided to him.

With respect to respondent's argument that the trial court improperly failed to "fully" consider whether a guardianship was a proper alternative to terminating his parental rights, there is no evidence on the record that respondent pursued a legal guardianship for the child below. Nor is there evidence that relatives of the child or the child's nonrelative foster parents would have agreed to such an arrangement. Further, the record establishes that the minor child required permanency that a guardianship could not provide. A trial court is not required to establish a guardianship in lieu of terminating parental rights if it is not in the child's best interests to do so. *In re McIntyre*, 192 Mich App 47, 52-53; 480 NW2d 293 (1991). We find no error in this regard.

Accordingly, the trial court did not clearly err by finding that termination of respondent's parental rights was in the child's best interests.

Affirmed.

/s/ /s/ Stephen L. Borrello
/s/ Deborah A. Servitto
/s/ Douglas B. Shapiro